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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. REGINA PEEL, Defendant and Appellant.	B201887 (Los Angeles County Super. Ct. No. MA030354)

APPEAL from a judgment of the Superior Court of Los Angeles County, John Murphy, Judge. Affirmed as modified.

Randi Covin, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan D. Martynec and Susan S. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

The jury found defendant Regina Peel guilty of six counts of grand theft of personal property (Pen. Code, § 487, subd. (a))[1] and three counts of money laundering (§ 186.10, subd. (a)). As to seven of the counts, the jury found true an allegation that defendant intentionally took, damaged, and destroyed property of a value exceeding $50,000 within the meaning of section 12022.6, subdivision (a)(1). Defendant was sentenced to concurrent terms of three years in state prison.

In this timely appeal, defendant contends the admission of her out-of-court statements to the police violated her constitutional right against self-incrimination. She further contends the concurrent sentences imposed on the convictions of three counts of money laundering should be stayed under section 654. Finally, she argues the abstract of judgment should be corrected to reflect the correct amount of victim restitution. We conclude the abstract of judgment should be corrected, but in all other respects the judgment should be affirmed.

STATEMENT OF FACTS[2]

Defendant, a minister, met Carletta McCray, a financial services broker, in 2001. Defendant assisted McCray in her business.

In June 2003, McCray had Lories Tolbert, a real estate investor, make out a check for $7,500 payable to defendant and deposit the check into defendant's bank account, purportedly to open an escrow for a purchase of real estate. Defendant's account was not an escrow account.

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[1] Hereinafter, all statutory references will be to the Penal Code unless otherwise indicated.

[2] As this appeal presents no issue of sufficiency of the evidence to support the convictions, we state the facts in the light most favorable to the judgment.

In November 2002, defendant obtained a $5,000 second trust deed loan from Kevin Bush, through McCray. In November 2003, as defendant did not timely repay the loan, Bush began foreclosure proceedings on defendant's home.

In November 2003, McCray had real estate investor Fei Fei McAlinden provide a cashier's check for $7,300 payable to Golden State, purportedly to pay for an appraisal of hotel properties. No appraisal was done, and the $7,300 was never returned to McAlinden. Defendant used Fei Fei McAlinden's $7,300 cashier's check to repay the loan from Bush and obtain reconveyance of the second trust deed.

In February 2004, McCray had Yolanda Johnson give defendant a cashier's check for $4,200 payable to Carpenter Properties, which Johnson believed was McCray's company, and $800 in cash, purportedly to be placed in an escrow account in order to hold a house that Johnson wanted to purchase. Defendant assured Johnson that she and McCray would get Johnson the house she wanted. The house was not purchased, and Johnson did not get her money back. Carpenter Properties was the property management company that managed an office that McCray rented. As McCray was behind on her rent, Carpenter Properties had impounded all of McCray's business assets in the office. On McCray's behalf, defendant asked Carpenter Properties to release the assets to defendant. Defendant obtained the release of the assets by giving Johnson's $4,200 cashier's check to Carpenter Properties to satisfy the back rent and other charges McCray owed.

In 2004, McCray was Kimberly James's broker for refinancing James's house. Defendant went over the loan documents with James. Defendant had James sign a blank approval of where the escrow funds should go. Unbeknownst to James, the blank was filled in with an instruction to the escrow company to wire $20,000 of the escrow proceeds into defendant's personal bank account. Escrow wire-transferred the $20,000 to defendant's bank account on June 8, 2003, and, in a series of withdrawals, defendant withdrew the $20,000 by June 16, 2003. Defendant reassured James that the money was

safe in defendant's account and would be put into an escrow account later. James never received her $20,000.

In 2004, Kenda Edwards[3] engaged McCray to help her obtain refinancing of the loan on her house. McCray had Kenda deposit $1,500 into what McCray told Kenda was an escrow account to start the loan. In fact, the account belonged to defendant. Defendant told Kenda to place more money into the account, bringing the total to $3,635. All sums were deposited into defendant's bank account. The loan application was never filled out, Kenda's loan was not refinanced, and Kenda never got her money back. Defendant withdrew $1,550 by June 18, 2004.

In May 2003, Diane Edwards engaged McCray to help her obtain refinancing of her house. Defendant gave Diane loan papers to sign. After signing all papers, McCray had Diane sign her name again 20 times. Diane referred other people to McCray. When there were problems with the other people's deals, defendant warned Diane not to let those people hurt McCray. Without Diane's knowledge or permission, escrow was instructed to disburse $17,000 to "If My People Ministry" in care of defendant. The escrow instruction and buyer's estimated closing statement contained Diane's signature, but she did not sign the documents or authorize them. Defendant opened a business banking account on May 28, 2003. Diane's $17,000 was wire-transferred into that account, which was entitled "Regina Peel DBA If My People Ministries," on May 30, 2003, and wire-transferred out on June 2, 2003. Defendant closed the account on June 2, 2003.

DISCUSSION

Miranda

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[3] As two people named Edwards were victims in this case, we will refer to each by her first name.

Defendant contends admission of the statements she made to the police during an investigative interview in her home violated the Fifth Amendment because they stemmed from a custodial interrogation and she was not advised of her rights under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*). We conclude the interview was not custodial and *Miranda* warnings were therefore not required.

A. Custodial Interrogation Requirement

"'Before being subjected to "custodial interrogation," a suspect "must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed."' (*People v. Mayfield* (1997) 14 Cal.4th 668, 732, quoting *Miranda*[, *supra*,] 384 U.S. [at p.] 444.) . . . [¶] An interrogation is custodial when 'a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.' (*Miranda*[,] *supra*, 384 U.S. at p. 444.) Whether a person is in custody is an objective test; the pertinent inquiry is whether there was '"'a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest.'"' (*People v. Ochoa* (1998) 19 Cal.4th 353, 401.)" (*People v. Leonard* (2007) 40 Cal.4th 1370, 1399-1400.) "Although the circumstances of each case must certainly influence a determination of whether a suspect is 'in custody' for purposes of receiving *Miranda* protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest. [Citation.] . . . [W]e have explicitly recognized that *Miranda* warnings are not required 'simply because the questioned person is one whom the police suspect.' [Citation.]" (*California v. Beheler* (1983) 463 U.S. 1121, 1125.)

B. Standard of Review

"The question whether defendant was in custody for Miranda purposes is a mixed question of law and fact. [Citation.] 'Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene is . . . reconstructed, the court must apply an objective test to resolve "the ultimate inquiry": "[was] there a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." [Citations.] The first inquiry, all agree, is distinctly factual. . . . The second inquiry, however, calls for application of the controlling legal standard to the historical facts. This ultimate determination . . . presents a "mixed question of law and fact" . . . .' [Citation.] Accordingly, we apply a deferential substantial evidence standard (*People v. Memro* (1995) 11 Cal.4th 786, 826) to the trial court's conclusions regarding '"basic, primary, or historical facts: facts 'in the sense of recital of external events and the credibility of their narrators . . . .'"' [Citation.] Having determined the propriety of the court's findings under that standard, we independently decide whether 'a reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave.' [Citation.]" (*People v. Ochoa*, *supra*, 19 Cal.4th at pp. 401-402.)

C. Proceedings in the Trial Court on the Admissibility of the Interview

No objection on Fifth Amendment grounds was made to the use of defendant's interview statements at trial, until the prosecution moved the tape recording and transcript of the interview into evidence. No pretrial motion to suppress the statements was made; no suppression hearing was requested. In his opening statement, the prosecutor recounted part of the interview and stated the jury would hear a recording of the entire interview. Detective Chris Christopher testified on direct examination about what defendant said during the interview. The tape recording was played for the jury, which was provided with a transcript. Defense counsel cross-examined Detective Christopher.

The prosecutor moved to admit the tapes and transcript into evidence. Although noting that "the horse is out of the barn on it," defendant objected to the tapes' admission. Defendant acknowledged that initially she was free to leave but argued that later she was detained. The trial court admitted the recording and transcript.

D. Circumstances Surrounding the Interview

The transcript of the interview reveals the following. Detectives Christopher and Bob Campbell went to defendant's house at 7:10 a.m. on July 27, 2004, and asked defendant if she had a minute to talk; she said yes and invited them into her home. Defendant knew them and what they had come to talk to her about, because she had spoken to them two weeks earlier when they interviewed McCray. She was aware the detectives would have to talk to her. Defendant was not arrested. No one else was home, and no other detectives were present for most of the interview.

Defendant was asked about her relationship with McCray, her income and finances, her employment with McCray, and specific transactions. She was shown documents evidencing those transactions. Early in the interview, defendant interrupted a question to ask if the interview was being taped, and when she was told it was, she said, "Okay. Go ahead—what did you say now?"

More than halfway through the interview, Detective Campbell told defendant he had a search warrant to search her house. The detectives encouraged defendant to be honest and told her some of her answers were not credible. They urged her to step forward and tell the truth, or else she would be on "the wrong side of the scrimmage . . . I'm talking about criminal involvement."

Near the end of the interview, defendant asked for a glass of water and was given one. Detective Campbell stated to defendant that "[i]f this case is presented and you're a defendant . . . [y]ou're going to have the choice. Do I take the witness stand or do I not take the witness stand?" He asked her how would it look on the witness stand if she gave the same denials of knowledge and memory that she was giving during the interview.

At 10:25 a.m., less than ten minutes before the interview was concluded, defendant stated, "I asked you over an hour ago, could I call my attorney. . . . [¶] Detective Campbell: And I said, 'no.' [¶] Defendant: Okay. [¶] Detective Campbell: You're not under arrest. [¶] Defendant: Oh, I know. I'm just being detained. [¶] Detective Campbell: Good. Right."

Shortly before the interview ended, Detective Christopher interrupted an answer defendant was giving. Defendant told the detectives, "hold on. Let me finish." When asked what happened to a $7,300 check, defendant did not answer, and, instead, asked, "Are we doing an interrogation right here? [¶] Detective Campbell: "We're just talking. It's a question. [¶] Defendant: Are we finished? [¶] . . . [¶] I don't want to talk any more. And I want to see the video [the police were making a video of what her house looked like before and after executing the search warrant] so that you could leave." She was told that all the detectives would leave when the videotaping was finished. Shortly thereafter, the detectives were ready to leave, and defendant thanked Detective Campbell for talking to her. Detective Campbell told defendant to feel free to call him, and defendant replied, "I'll call you. I sure will call you. [¶] . . . [¶] I'll call you. Thank you so much. [¶] . . . [¶] [H]ave a good day." The detectives were at defendant's house less than three and a half hours. The recorded interview lasted about two- and three-quarter hours long.

Detective Christopher's testimony revealed the following. The interview took place in defendant's living room. The detectives wanted to find out why money given to McCray was deposited into defendant's account or paid directly to third parties for defendant's benefit. Defendant asked for a lawyer a few times during the service of the search warrant. Defendant was not under arrest and was free to leave. She was not given the right to have a lawyer because she was not under arrest. She could have consulted with a lawyer if she had left the location. She was detained during the search warrant, but would have been permitted to leave if she so requested. Defendant was not told she could leave. Detective Barnes, who was a large person, joined the detectives in

interviewing defendant after two and a half to three hours.[4] No other police officers were present or nearby until the search warrant was executed.

E. Substantial Evidence Supports the Trial Court's Implied Finding on the Issue of Custody

The issue comes to us in an unusual posture, in that defendant made no motion to suppress the statement before trial, did not object to the prosecutor's questioning of witnesses about it and playing the tape recordings, and defense counsel engaged in cross-examination before objecting to admission of the tape itself. While a strong argument could be made for forfeiture of the issue under these circumstances, the Attorney General does not raise the point and addresses the merits of the contention. We therefore address the merits as well, deferring to the implied findings of the trial court.

The following evidence constitutes substantial evidence supporting a finding defendant was not in custody at the time of the interview, as measured by objective standards. The interview took place in the familiar surroundings of defendant's living room. Defendant consented to the interview. She was familiar with the detectives, knew what they were investigating and expected they would want to interview her. She invited them into her home to conduct the interview. She was not placed under arrest and knew she was not under arrest. The questioning was not particularly aggressive or accusatory. Defendant was allowed to interrupt the questions and ask her own questions. Her request for a drink of water was immediately granted. While defendant was not permitted to interfere with the service of the search warrant, she was free to leave the house if she chose to do so.

Defendant's situation is not significantly different from that of the defendant in *Beckwith v. United States* (1976) 425 U.S. 341, 342-343, in which the defendant was

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[4] Detective Christopher testified that the indications in the transcript that Detective Barnes joined earlier are incorrect.

questioned by two Internal Revenue Service agents in his home. The agents were invited into the home where they interviewed the defendant for three hours at the dining room table. The defendant was advised of the reason for the interview and of certain rights, but the warnings did not satisfy *Miranda*. (*Id*. at p. 343.) The Supreme Court rejected the notion that the defendant was in custody for *Miranda* purposes. (*Id*. at p. 344.)

"An interview with Government agents in a situation such as the one shown by this record simply does not present the elements which the *Miranda* Court found so inherently coercive as to require its holding. Although the 'focus' of an investigation may indeed have been on Beckwith at the time of the interview in the sense that it was his tax liability which was under scrutiny, he hardly found himself in the custodial situation described by the *Miranda* Court as the basis for its holding. *Miranda* implicitly defined 'focus,' for its purposes, as 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.' [(*Miranda, supra*, 384 U.S. at p. 444.)] It may well be true, as petitioner contends, that the 'starting point' for the criminal prosecution was the information obtained from petitioner and the records exhibited by him. But this amounts to no more than saying that a tax return signed by a taxpayer can be the 'starting point' for a prosecution." (*Beckwith v. United States, supra*, 425 U.S. at p. 347.)

Our independent review of the record leads us to conclude that "a reasonable person in defendant's position would have felt free to end the questioning and leave." (*People v. Ochoa, supra*, 19 Cal.4th at p. 402.) Thus, as the interview was not custodial, admission of the tape recording and transcript of the interview did not violate defendant's Fifth Amendment right against self-incrimination.

Section 654

Defendant contends the concurrent sentences imposed on the convictions of three counts of money laundering[5] should be stayed under section 654 because they constitute impermissible multiple punishment. She contends multiple punishment is improper, because the grand theft and money laundering were part of a scheme having the single objective of obtaining the victims' money by embezzlement or trick, and the deposit of the money into defendant's bank accounts was the method used to steal the money. We disagree.

Section 654 prohibits multiple punishments for a single act or omission, even when that act or omission violates more than one statute and thus constitutes more than one crime.[6] Thus, although a defendant may be charged with and convicted of multiple crimes arising from a single act, the defendant may be sentenced only on the crime carrying the highest punishment; the sentence on the other counts arising from the same act must be stayed. (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1135.) However, if the defendant "harbored 'multiple criminal objectives,' which were independent of and not merely incidental to each other, he may be punished for each statutory violation committed in pursuit of each objective, 'even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.' [Citation.]" (*People v. Harrison* (1989) 48 Cal.3d 321, 335.) The question of whether a defendant harbored

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5 In count 22, defendant was convicted of money laundering of Tolbert's $7,500 that was the subject of the grand theft conviction in count two. In count 24, defendant was convicted of money laundering of $21,510, part of Kenda's and James' money that was the subject of the grand theft convictions in counts 15 and 16. In count 26, defendant was convicted of money laundering of Diane's $17,000 that was the subject of the grand theft conviction in count 25.

6 "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." (§ 654, subd. (a).)

multiple objectives within the meaning of section 654 is a question of fact, and we will affirm if there is substantial evidence to support the trial court's implied finding that defendant in this case had different objectives with regard to the grand thefts and money laundering. (*People v. Osband* (1996) 13 Cal.4th 622, 730-731.)

The record contains substantial evidence that defendant entertained different objectives in committing grand theft and money laundering. Defendant's intent when committing grand theft was to illegally obtain the victims' money by trick, false pretenses or embezzlement. With the intent to take the victims' money, defendant tricked Tolbert and Diane into depositing money into defendant's accounts and tricked James and Kenda to sign blank instructions so that instructions could be forged directing the deposit of their money into defendant's accounts. Subsequently, there was evidence defendant withdrew those sums from her accounts. This shows that her intent in running the money through her accounts was to conceal the money's origin. Thus, the crimes were motivated by separate objectives: an intent to steal motivated the thefts; and an intent to conceal the source of the funds defendant withdrew from of her accounts motivated the money laundering.

As defendant had different objectives, imposition of punishment for both the grand theft and money laundering convictions did not violate section 654.

Victim Restitution Order

Defendant contends that the clerk's minutes and the abstract of judgment do not accurately reflect the total amount of restitution to the victims that the trial court ordered pursuant to section 1202.4, subdivision (f) and should be corrected. Respondent concedes the point. We accept respondent's concession. Accordingly, we will order the

minutes and abstract of judgment corrected to reflect the total restitution ordered to victims in this case is $55,535.[7]

DISPOSITION

The abstract of judgment and minute order of proceedings on July 26, 2007, are corrected to reflect restitution to be paid to victims is $55,535, rather than $101,787.91, pursuant to section 1202.4, subdivision (f). The clerk of the superior court is to forward a copy of the amended abstract of judgment and minute order to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.

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[7] The total consists of $17,000 to Diane Edwards, $3,535 to Kenda Edwards, $20,000 to Kimberly James and Lamondo Watkins, $4,200 to Yolanda Johnson, $7,300 to Fei Fei McAlinden, and $3,500 to Lories Tolbert. Defendant's indication that the amount ordered to be reimbursed to Tolbert is $7,500 is mistaken.